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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 735

JOHN H. LEIGHTON, JAMES A. MCPHERSON, SUE P. Leighton, Herman Weinberger, Ralph W. Crosman, and Robert L. Wyrick, petitioners

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals (R. 65–76) is reported in 61 F. (2d) 530.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 3, 1932. (R. 77.) A petition for a rehearing was denied January 9, 1933. (R. 78.) Petition for a writ of certiorari was filed

February 27, 1933. Although petitioners do not so state, the jurisdiction of this Court is presumably invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether Section 280 of the Revenue Act of 1926 provides the exclusive remedy for the enforcement of the income tax liability of a corporate transferor against a transferee of its assets.

STATUTES INVOLVED

The statutes involved will be found in the Appendix, *infra,* pp. 11–13.

STATEMENT

This case was instituted by a bill in equity (R. 2–18) to compel the distributees of certain corporate assets to account for the property received by them and to apply it to the payment of taxes due from the corporation. The facts as found by the District Court (R. 39–41) may be summarized as follows:

Petitioners were stockholders of Leighton & Company (Inc.) (R. 40), a corporation organized under the laws of California in 1917 (R. 39). The corporation filed income-tax returns for the years 1918, 1919, and 1920, and entered into written waivers with the Commissioner of Internal Revenue by which the period for assessment of additional taxes for the years 1918 and 1919 was extended to March 3, 1926. (R. 39–40.) On January

16, 1926, the Commissioner duly assessed against the corporation additional taxes for the calendar year 1918 amounting to $12,455.40; for the calendar year 1919 in the amount of $11,667.53; for the calendar year 1920 in the amount of $9,259.21. No part of these assessments was ever paid. (R. 40.)

On February 23, 1921, the corporation sold its business, trade fixtures, and other assets for $12,000 in cash, which was distributed to its stockholders, including the petitioners. (R. 40.) Following the sale the corporation discontinued doing business and has not since reengaged in business. Upon distribution of the proceeds of the sale the corporation was left without money, assets, or property of any kind, and has since acquired none, with which to pay taxes to the United States or upon which levy might be made. Attempts by the Collector of Internal Revenue to collect the taxes by distraint proceedings against the corporation were unsuccessful. No judgment was ever obtained against the corporation, and no proceedings other than the present were ever begun against the stockholders to impose the liability for the taxes upon them. (R. 41.) The present suit was authorized by the Commissioner. (R. 41.)

The District Court held that the corporate assets distributed to the petitioners constituted a "trust fund" for the payment of the taxes owing by the corporation and that the petitioners as distributees were accountable for such trust property to the ex-

tent of amounts received on distribution, together with interest at 6% from January 16, 1926, the date of the assessment against the corporation, and judgment was entered accordingly. (R. 49–50.) The Circuit Court of Appeals affirmed the judgment of the District Court. (R. 77.)

ARGUMENT

The principal contention of the petitioners is that Section 280 of the Revenue Act of 1926 (*infra*, p. 11) provided the exclusive means whereby the United States could enforce the liability of a transferee for income tax of a transferor.

The decision of the court below rejecting this contention is in accord with all of the cases where the question has been decided or discussed. These decisions conclude that Section 280 did not provide an exclusive remedy, but only a new and additional one, and accordingly that the United States retained the right, which it had before Section 280 was enacted, to proceed by action in equity to enforce the liability of a transferee. In *Phillips* v. *Commissioner*, 283 U. S. 589, this Court said (p. 593, footnote 3):

> * * * This remedy is in addition to proceedings to enforce the tax lien or actions at law and in equity. Act of February 26, 1926, c. 27, § 1122 (b), 44 Stat. 9, 121; Act of May 29, 1928, c. 852, § 617 (b), 45 Stat. 791, 877. Compare *United States* v. *Greenfield Tap & Die Corp.*, 27 F. (2d) 933; *United States* v.

Updike, 25 F. (2d) 746, 747, affirmed, 32 F. (2d) 1, 4, 281 U. S. 489.

In the *Phillips case* also, at page 594, the Court said that "Section 280 (a) (1) provides the United States with a new remedy * * *" and at page 601 it was stated that "The power of Congress to provide an additional remedy for the enforcement of existing liabilities is clear."

In *United States* v. *Updike,* 281 U. S. 489, this Court affirmed the decision of the Circuit Court of Appeals for the Eighth Circuit (32 F. (2d) 1), affirming the judgment of the District Court (25 F. (2d) 746), in a case involving the question whether an action brought by the United States in a District Court against a transferee to enforce the transferee's liability for his transferor's taxes, was barred by the statute of limitations. Both lower courts had observed that Section 280 did not bar the suit by providing an exclusive administrative remedy. This Court did not notice the point in its opinion, but apparently assumed the correctness of the views expressed below.

In *United States* v. *Garfunkel,* 52 F. (2d) 727 (S. D. N. Y.), and *United States* v. *Greenfied Tap & Die Corp.,* 27 F. (2d) 933 (D. Mass.), the courts held that Section 280 was not intended to affect the right of the United States to proceed in the District Courts against the transferee. In the latter case the decision rested in part upon the provision in

Section 1122 (b) of the Revenue Act of 1926 (*infra*, p. 12) that the District Courts of the United States had jurisdiction to take such action either at law or in equity as might be necessary or appropriate for the enforcement of the provisions of that Act. Section 1122 (b) further states that—

> The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such provisions.

This section follows Section 280 in the Revenue Act of 1926, and the court applied the rule of statutory construction that the later of two sections is controlling in the event that the provisions of the two are thought to be in conflict. See *United States* v. *Daniels*, 279 Fed. 844 (C. C. A. 2d); *United States* v. *Jackson*, 143 Fed. 783 (C. C. A. 9th); *In re Richards*, 96 Fed. 935, 939 (C. C. A. 7th).

The petitioners' contention that Section 280 of the Revenue Act of 1926 provides an exclusive remedy for the enforcement of transferees' liability finds support in Committee Reports preceding the passage by Congress of the 1926 Act and by further Committee Reports in 1928 when it was suggested that Section 280 should be altered. The Reports indicate that Congress intended Section 280 to be a substitute for the procedure theretofore available to the Government under R. S. Sec. 3213

(*infra*, p. 12). It was felt that the prevailing remedy was inadequate and productive of confusion, and that, therefore, the creation of a new and uniform procedure before the Board of Tax Appeals was desirable. See Senate Report No. 52, 69th Cong., 1st Sess., pp. 28–30; House Report No. 356 (Conference Report), 69th Cong., 1st Sess., pp. 42–44. In the latter at p. 44 it was said that the—

> proceeding is in lieu of the present equity proceeding and is exclusive * * *.
>
> * * * the amendment makes the procedure for the collection of the amount of the liability of transferees conform to the procedure for the collection of taxes. The amendment thereby substitutes the specialized and more expeditious procedure of the board for that of the district courts in equity * * *.

In 1928 the Joint Committee on Internal Revenue Taxation, after remarking that Section 280 appeared to be the exclusive remedy at that time, recommended "that the procedure by suit be restored as an alternative method of collection." H. Doc. No. 139, 70th Cong., 1st Sess., p. 15. The House of Representatives adopted the suggestion and proposed the restoration in the 1928 Act of the power to proceed against a transferee in the Federal District Courts. See House Report No. 2, 70th Cong., 1st Sess., p. 32. The Senate, however, refused to accept the House proposal, its Committee on Finance reporting that the new procedure under Sec-

tion 280 was exclusive under the 1926 Act, that it had proved of greater effectiveness in preventing tax evasion than the former method of court procedure, and that restoration of the old procedure was neither needed nor desirable. Senate Report No. 960, 70th Cong., 1st Sess., p. 40. Thereafter, the House of Representatives receded, and accepted the Senate amendment; the Conference Report noted that the proceedings under Section 280 were exclusive. House Report No. 1882, 70th Cong., 1st Sess., p. 22.

Although it does not appear that this legislative history has been considered in all of the cases where the question has been decided or discussed, it was mentioned in the Government's brief in *Phillips* v. *Commissioner, supra,* and, in its opinion, this Court referred to H. Rep. No. 356, 69th Cong., 1st Sess., *supra* (see 283 U. S. 594–5, footnote 4), so that it is clear that when reference was made to Section 280 as providing an additional remedy, the Court was aware of the views of the Committees that it was to be exclusive. None of the decided cases indicate that any of the courts have considered that the language of Section 280 required construction in the light of the legislative history. The decision of the court below is in accord with all decided cases, and there seems to be no reason for further consideration of the matter in this Court in the absence of a conflict of decisions.

Petitioners also argue that the present proceeding is barred by the statute of limitations; that the District Court was without jurisdiction in equity, because it is alleged that the Government had an adequate and complete remedy at law; and that interest was improperly awarded against them. We submit that these contentions are wholly without merit.

If Section 280 provides merely a cumulative remedy so that a suit in equity is a proper method of enforcing the Government's claim against petitioners, the applicable statute of limitations is to be found in Section 278(d) of the Revenue Act of 1926 (*infra*, p. 11), which establishes a limitation of six years dating from the assessment against the corporation. See *United States* v. *Updike*, 281 U. S. 489.

The bill of complaint in the instant case alleged that the transferor had denuded itself of all of its property. Thus the circumstances which gave rise to a trust in favor of the United States also showed the futility of obtaining judgment and levying execution against the transferor, and that idle ceremony was therefore unnecesary. See *Case* v. *Beauregard*, 101 U. S. 688, 691.

Since interest in reasonable amount was a part of the tax itself (*Billings* v. *United States*, 232 U. S. 261; *Nolte* v. *Hudson Navigation Co.* 8 F. (2d) 859, 867–868 (C. C. A. 2d)), it is payable by the petitioners, as is the tax.

CONCLUSION

The decision of the court below is in accord with all decided cases and seems to be supported by decisions of this Court. The petition for certiorari should be denied.

Respectfully submitted.

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Special Assistants to the Attorney General.
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MARCH, 1933.

APPENDIX

REVENUE ACT OF 1926, C. 27, 44 STAT. 9, 59, 61, 121

SEC. 278. (d) Where the assessment of any income, excess-profits, or war-profits tax imposed by this title or by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act) but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer. (U. S. C. App., Title 26, Sec. 1061.)

SEC. 280. (a) The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon

the taxpayer by this title or by any prior income, excess-profits, or war-profits tax Act.

* * * * *

(b) The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the taxpayer;

* * * * *

(U. S. C. App., Title 26, Sec. 1069.)

SEC. 1122. (b) The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the provisions of this Act. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such provisions. (U. S. C. App., Title 26, Sec. 1257.)

REVISED STATUTES

SEC. 3213. It shall be the duty of the collectors, in their respective districts, subject to the provisions of this Title, to prosecute for the recovery of any sums which may be forfeited by law. All suits for fines, penalties, and forfeitures, where not otherwise provided for, shall be brought in the name

of the United States, in any proper form of action, or by any appropriate form of proceeding, qui tam or otherwise, before any circuit or district court of the United States, for the district within which said fine, penalty, or forfeiture may have been incurred, or before any other court of competent jurisdiction; and taxes may be sued for and recovered in the name of the United States, in any proper form of action, before any circuit or district court of the United States for the district within which the liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the said action. (U. S. C., Title 26, Sec. 142.)

U. S. GOVERNMENT PRINTING OFFICE, 1933

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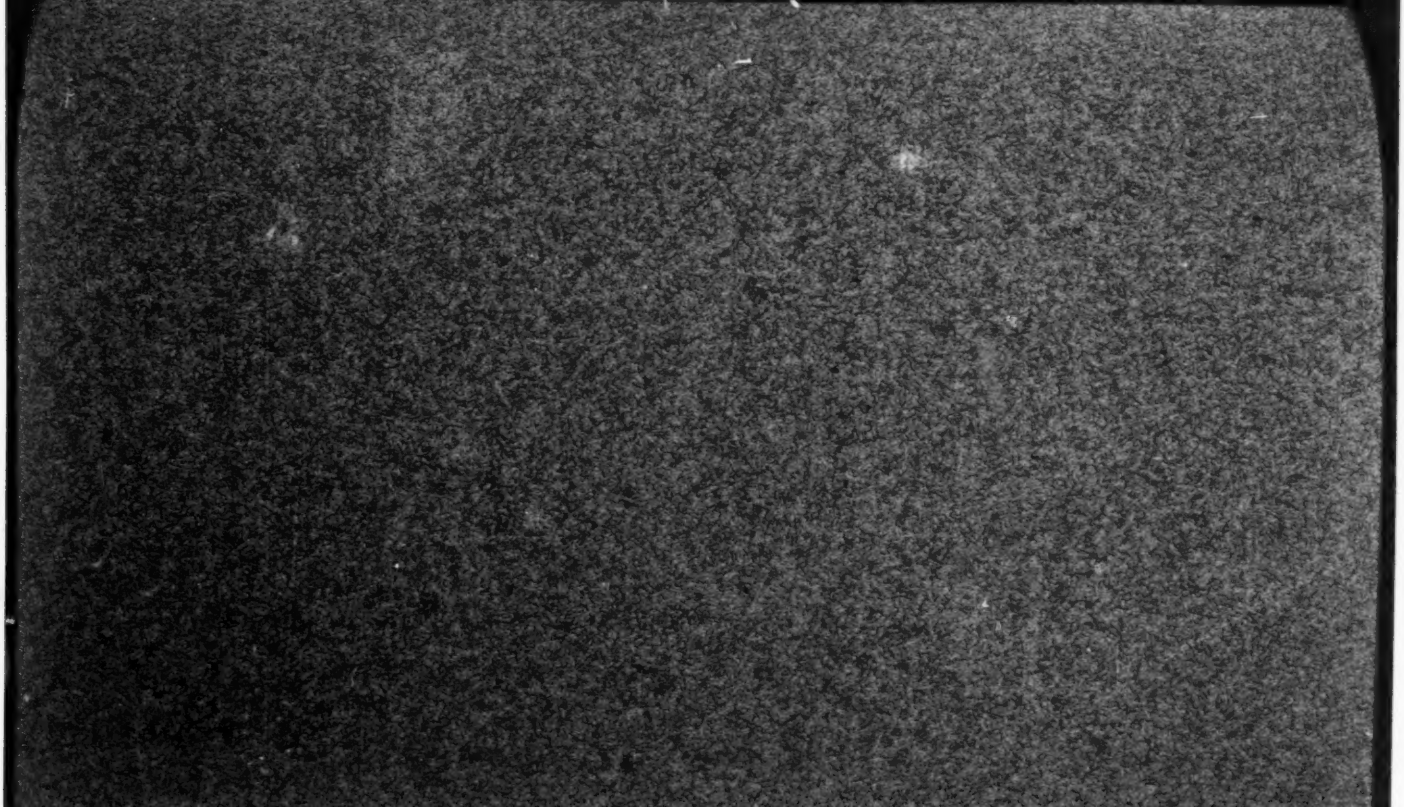

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OPINIONS BELOW

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals (R. 65–76) is reported in 61 F. (2d) 530.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 3, 1932 (R. 77). A petition for rehearing was denied January 9, 1933 (R. 78). The petition for a writ of certiorari was filed Feb-

ruary 27, 1933, and was granted April 10, 1933 (R. 81). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether Section 280 of the Revenue Act of 1926 deprived the Government of its right to sue in equity to enforce payment of a tax from assets of the taxpayer held by voluntary transferees.

2. Whether the action is barred by the statute of limitations.

3. Whether the case falls within the jurisdiction of equity.

4. Whether the Government was entitled to interest from the date of the assessment.

STATUTES INVOLVED

The statutes involved will be found in the Appendix, *infra*, pp. 27–31.

STATEMENT

This is an action in equity by the United States to compel the petitioners, distributees of certain corporate assets, to account for the property received by them and apply it to the payment of taxes due the United States from the corporation (R. 2–18). The facts as they appear from the pleadings and as found by the District Court (R. 39–41) may be summarized as follows:

The petitioners were stockholders of Leighton and Company, Inc. (R. 40), a California corpora-

tion organized in 1917 (R. 39). The corporation filed income-tax returns for 1918, 1919, and 1920, and executed written waivers which extended the period for assessment of additional taxes for 1918 and 1919 to March 3, 1926 (R. 39–40). On September 19, 1925, the Commissioner of Internal Revenue sent the corporation a notice of a deficiency, amounting to $33,382.16, in its taxes for the three years (R. 13, 27). No appeal was taken from the Commissioner's determination of such deficiency (R. 14, 27–29), and on January 16, 1926, the Commissioner assessed the amount thereof against the corporation, but no part of the assessment was ever paid (R. 40). The present suit was brought in July, 1929 (R. 18).

On February 23, 1921, the corporation sold its business and all other assets for $12,000 in cash, which was shortly afterwards distributed to the stockholders, including petitioners, thus leaving the corporation without any property with which to pay the taxes in question or upon which levy might be made. Attempts by the Collector to collect the taxes by distraint proceedings against the corporation were unsuccessful. No judgment was ever obtained against the corporation and no proceedings other than the present were ever begun against the stockholders. The present suit was authorized by the Commissioner. (R. 40–41.)

Upon these facts the District Court held (R. 41–42) that the assets distributed to the petitioners constituted a trust fund for payment of the taxes

owing by the corporation and that the petitioners as distributees were accountable to the extent of the property each of them had received, together with interest at 6% from January 16, 1926, the date of the assessment against the corporation. Judgment was entered accordingly (R. 49–50). The Circuit Court of Appeals affirmed the judgment (R. 77).

SUMMARY OF ARGUMENT

I

The courts, including this Court, have uniformly held that Section 280 of the Revenue Act of 1926 did not deprive the Government of its right to enforce by suit in equity the liability of a transferee of a taxpayer's property, but operated only to add a new and summary remedy against such transferee. This, we submit, is the correct view. Section 280 does not expressly abolish any prior remedies of the Government and there is nothing in its language which suggests that such result was intended. Moreover, to so construe Section 280 would bring it into direct conflict with other provisions of the 1926 Act which clearly establish that Section 280 was not intended to supersede other remedies then existing. The Government may not be deprived of existing remedies except by language susceptible of no other interpretation.

It is true that some of the legislative committee reports indicate that Section 280 was intended to

provide an exclusive remedy, but resort to such reports for ascertainment of the legislative intent is inhibited where, as here, the applicable statutes are without ambiguity.

The present suit is not barred by the statute of limitations since it was brought within the six-year period provided by Section 278 (d) of the Revenue Act of 1926, the applicable statute. *United States* v. *Updike,* 281 U.S. 489.

II

The contention that the present suit is not cognizable in equity because the Government had an adequate remedy at law, by proceeding under Section 280, is but a different manner of saying that Section 280 superseded all other remedies. The appropriateness of a proceeding like the instant case under the facts here involved is firmly established. Moreover, the remedy provided by Section 280 did not exist at the time the present suit was started because of the lapse of the short period of limitation provided by that section. Nor is it an objection to the jurisdiction of equity that the Government did not first secure a judgment against the petitioners' transferor, in view of the fact that the transferor was left wholly without assets by the transfer in question.

III

There was no abuse of discretion in the allowance of interest from the date of assessment of the

tax rather than from the date suit was begun. The petitioners have had the use of the taxpayer's property since 1921, and upon the assessment in 1926, if not earlier, the Government became entitled to the application of that property in settlement of the tax debt. Interest is compensation for the use of money or its equivalent, and the petitioners have had the use of the taxpayer's property from a date anteceding that from which interest was allowed.

ARGUMENT

I

SECTION 280 OF THE REVENUE ACT OF 1926 DID NOT DEPRIVE THE GOVERNMENT OF ITS RIGHT TO ENFORCE THE LIABILITY OF A TRANSFEREE OF A TAXPAYER BY A SUIT IN EQUITY

Prior to the enactment of Section 280 of the Revenue Act of 1926, p. 29, *infra*, it was well settled that the United States might maintain a bill in equity to enforce the collection of unpaid taxes from a transferee of the taxpayer. *Phillips* v. *Commissioner*, 283 U.S. 589, 592–593; *United States* v. *Updike*, 281 U.S. 489; *Russell* v. *United States*, 278 U.S. 181. By Section 280 it was provided that the liability of such a transferee, "at law or in equity," might be enforced summarily, in the same manner as that of a delinquent taxpayer. The petitioners contend that since the enactment of Section 280 the sole remedy available to the United States for enforcement of the lia-

bility of a distributee of a taxpayer's property is the summary procedure authorized by that section. The courts below held, correctly we contend, that the statutory remedy provided by Section 280 is merely cumulative, and that the United States retains the right, which it had before Section 280 was enacted, of proceeding in equity to enforce the transferee's liability.

The decision of the courts below is in accord with the views expressed by every court which has passed upon the question. In *Phillips* v. *Commissioner,* 283 U.S. 589, *supra,* this Court said (pp. 593–594, note 3) that—

> This remedy [Section 280] is in addition to proceedings to enforce the tax lien or actions at law and in equity. Act of February 26, 1926, c. 27, § 1122 (b), 44 Stat. 9, 121; Act of May 29, 1928, c. 852, § 617 (b), 45 Stat. 791, 877. Compare *United States* v. *Greenfield Tap & Die Corp.,* 27 F. (2d) 933; *United States* v. *Updike,* 25 F. (2d) 746, 747, affirmed, 32 F. (2d) 1, 4, 281 U.S. 489.

The opinion stated further (p. 592) that "Before the enactment of § 280 (a) (1), such payment by the stockholders could be enforced *only* by bill in equity or action at law," and (p. 601) that "the power of Congress to provide an *additional* remedy for the enforcement of existing liabilities is clear." (Italics ours.)

The conclusion that Section 280 is not exclusive of other remedies had been reached prior to the

decision of this Court in the *Phillips case* in *United States* v. *Greenfield Tap & Die Corp.*, 27 F. (2d) 933 (D.Mass.), and in *United States* v. *Updike*, 25 F. (2d) 746, 747 (D.Neb.), affirmed, 32 F. (2d) 1, 4 (C.C.A. 8th), 281 U.S. 489. The same result was subsequently reached in *United States* v. *Garfunkel*, 52 F. (2d) 727 (S.D.N.Y.), the only decision on the point, other than the instant case, since the *Phillips case*.[1] In the *Updike case, supra*, the point involved was directly discussed and decided only in the opinions of the lower courts, but the Circuit Court of Appeals in the instant case said (R. 75):

> * * * it must follow that the Supreme Court, in the *Updike case* as well as in the *Phillips case*, did not regard Section 280 as exclusive, but cumulative; for though in the *Updike case* the provisions of Section 280 had not been complied with the Supreme Court did not regard such compliance as necessary to the government's right to

[1] In several other suits in equity instituted since the effective date of the Revenue Act of 1926 the parties and the courts have apparently assumed as a matter of course that Section 280 did not deprive the Government of its right to proceed in equity against a transferee. *Warner Collieries Co.* v. *United States*, 63 F. (2d) 34 (C.C.A. 6th); *Hunn* v. *United States*, 60 F. (2d) 430 (C.C.A. 8th); *Peoples Industrial Life Ins. Co.* v. *United States*, 29 F. (2d) 650 (C.C.A. 5th); *United States* v. *Tillinghast*, 55 F. (2d) 279, 283 (D.R.I.). We are advised by the Bureau of Internal Revenue that several like suits are now pending in the District Courts. See also *Pennsylvania-Dixie Cement Corporation* v. *United States*, 57 F. (2d) 909, 910 (C.Cls.).

> bring suit, but decided that case on other grounds, involving another section of the act. * * *[2]

Apart from the fact that the authorities uniformly support the Government's position,[3] we believe, as the Circuit Court of Appeals held (R. 76), that an independent consideration of the applicable statutes must inevitably lead to the same conclusion.

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[2] The Government's brief before this Court in the *Updike case* expressly referred to the precise question here presented. It was there said (p. 13):

"The courts below have recognized that in view of the provisions of Section 1122 (b) of the Revenue Act of 1926, * * * the remedy provided in Section 280 is not exclusive and that the Government has not thereby been deprived of its rights to proceed against the transferees of corporate assets by a suit in equity brought independently of Section 280. The District Court for the District of Massachusetts reached the same conclusion in *United States* v. *Greenfield Tap & Die Corporation*, 27 F. (2d) 933. Section 1318 of the Revenue Act of 1918, c. 18, 40 Stat. 1057, 1148; Section 1310 (b) of the Revenue Act of 1921, c. 136, 42 Stat. 227, 310; and Section 1025 (b) of the Revenue Act of 1924, c. 234, 43 Stat. 253, 348, contain provisions which are identical with Section 1122 (b) of the Revenue Act of 1926."

In the *Updike case* this Court referred (281 U.S. 489, 492–493) to Section 280 as prescribing "*a mode* of procedure against transferees of the property of taxpayer." (Italics ours.)

[3] In *United States* v. *Cruikshank*, 48 F. (2d) 352 (S.D. N.Y.), the same judge who later decided the *Garfunkel case* expressed some misgivings as to whether Section 316 (a) of the Revenue Act of 1926, the estate tax counterpart of Section 280 (a), provided a cumulative remedy, but said it was not necessary to decide the point.

Section 280 does not, of course, expressly abolish, nor even refer to, any previously existing remedies of the Government against the transferee of a taxpayer.[4] It merely provides (p. 29, *infra*) that—

> The amounts of the following liabilities shall * * * be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title * * *;
>
> (1) The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax * * * imposed upon the taxpayer * * *.

Obviously, there is nothing in this language to suggest that this new remedy would supersede all existing remedies and it would be presuming too much to conclude that any such result was intended. The language used is given full meaning if it is held to create a new and additional remedy. Other provisions of the statutes indicate that Section 280 must be thus interpreted.

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[4] The 1926 Act did not abolish the collection of taxes by proceedings in court; nor did it provide that an assessment should be a condition precedent to a suit to recover taxes. See Section 277(a), subdivisions (1) to (4), inclusive; Section 278, subdivisions (a), (b), and (d); Section 1109 (a)(3). See also *Dollar Savings Bank* v. *United States*, 19 Wall. 227; *United States* v. *Ayer*, 12 F. (2d) 194 (C.C.A. 1st). We do not understand the statement in petitioners' brief (p. 16) that "The old provision allowing the Commissioner to proceed with or without assessment was *expressly omitted* from the Act of 1926."

If, as petitioners contend, the remedy created by Section 280 is exclusive, then that section is brought into conflict with Section 3213 of the Revised Statutes, as amended, p. 31, *infra,* which provides that "taxes may be sued for and recovered in the name of the United States, *in any proper form of action,* before any district court of the United States."[5] (Italics ours.) It is also brought into conflict with Sections 278 (d) and 1109 (a) (3) of the Revenue Act of 1926, pp. 28, 29, *infra,* which provide that a tax which has been properly assessed "may be collected by distraint *or by a proceeding in court.*"[6] (Italics ours.) Such conflicts are avoided if the language of Section 280 be restricted to what we regard as its plain and ordinary meaning.

Even more persuasive, and, we think, controlling, is Section 1122 (b) of the 1926 Act, p. 30, *infra,* which provides that the District Courts of the United States at the instance of the United States shall have jurisdiction to take such action either at

[5] The petitioners assert (Br. pp. 24–25) that Section 3213, R.S., may be disregarded since it is a *general* statute which is subject to the *specific* provisions of Section 280. If the two provisions were in irreconcilable conflict, the rule of construction upon which petitioners rely would, no doubt, be applicable. But there is no conflict if the language of Section 280 be given the meaning which has been ascribed to it by this Court in the *Phillips case* and by all the other courts which have passed upon the point here involved.

[6] That Section 278 (d) is applicable to proceedings in equity against transferees is, of course, settled. *United States* v. *Updike*, 281 U.S. 489; cf. *Russell* v. *United States*, 278 U.S. 181.

law or in equity " *as may be necessary or appropriate* for the enforcement of the provisions of this Act" (italics ours), and that—

> The remedies hereby provided are *in addition to and not exclusive of* any and all other remedies of the United States in such courts or otherwise to enforce such provisions. (Italics ours.)

It cannot be disputed that the present proceeding is an "appropriate," if not a "necessary," one for the collection of the tax assessed against petitioners' transferor. The duty to collect this tax is clearly prescribed by the Revenue Act of 1926. (See, for example, Sec. 278 (d), p. 28, *infra;* 1109 (a) (3), p. 29, *infra;* see also Sections 283, 1115, and 1200 (b) of the Revenue Act of 1926.) It follows that the suit is one which is "necessary or appropriate for the enforcement of the provisions of this Act," and further that such remedy is "in addition" to any other remedy which might have been available.

The petitioners argue (Br. pp. 25–28) that the effect of Section 1122 (b), so far as Section 280 is concerned, is merely to provide additional court remedies to supplement the procedure authorized by Section 280 after the latter has been resorted to unsuccessfully.[7] But there is nothing in the lan-

[7] Similar contentions with respect to other statutes seem uniformly to have been rejected by the courts. *United States* v. *Ayer*, 12 F. (2d) 194 (C.C.A. 1st); *United States* v. *Nashville, C. & St. L. Ry.*, 249 Fed. 678 (C.C.A. 6th).

guage of Section 1122 (b) to indicate that this is so, and the courts, including this Court, have not so understood it. Section 1122 (b) was obviously intended to insure to the United States broad powers of resort to the courts for collection of the revenue, and the suggestion of the petitioners places a strained and unnatural meaning upon the language used and an unnecessary limitation upon the scope of the provision. Moreover, the procedure authorized by Section 280 is complete in itself, and "supplemental" resort to the courts is unnecessary to make it effective; the power of the Board of Tax Appeals to determine tax liability under Section 280 is plenary and review of its decisions by the courts is provided for in sections other than Section 1122 (b). (See *Phillips* v. *Commissioner,* 283 U.S. 589, 593–601.) Furthermore, the petitioners' construction is not consistent with Sections 278 (d) and 1109 (a) (3) of the 1926 Act, which provide specifically that where, as here, an assessment has been made, the "tax may be collected * * * by a proceeding in court." The present suit is a proceeding in court to collect a tax. *United States* v. *Updike,* 281 U.S. 489, 494.

To give Section 280 the construction suggested by petitioners not only requires an extension of the ordinary meaning of the language used, but also brings it into direct conflict with provisions of the same and other statutes. Such construction must give way to the more reasonable and consistent interpretation approved in the courts below. This was

the conclusion reached in the *Greenfield* case and by the District Court and the Circuit Court of Appeals in the *Updike case,* both of which cases were cited by this Court, together with Section 1122 (b) itself, in support of the statement in the *Phillips* decision quoted at p. 7, *supra.* The Circuit Court of Appeals in the *Updike* case, after citing Section 1122 (b), referred to Section 278 (d) and said (pp. 4–5):

> * * * the provisions of section 280 * * * are cumulative, and do not bar this suit. * * * Since 280 was enacted by the same Congress as enacted new section 278 (d), it fortifies our conclusion and that of the Supreme Court in the *Russell* Case, to wit, that 278 (d) applies to transferees. Congress was legislating on the subject, and covered limitations on assessments (but not suits) against transferees, in 280, and covered suits (but not assessments) against transferees in 278 (d).

The practical consequences of the petitioners' construction are not without significance (see *Woolford Realty Co.* v. *Rose,* 286 U.S. 319, 329–330), since under that construction a taxpayer, by transferring his property after the lapse of one year from the expiration of the period during which *he* might be assessed, may put such property irretrievably beyond the reach of the Government for the satisfaction of tax liabilities of the taxpayer. To illustrate: Where, as in this case, the

period for assessment against a taxpayer expires after enactment of the Revenue Act of 1926, proceedings under Section 280 must be begun not more than one year later. (See Section 280 (b) (1) of the Revenue Act of 1926, p. 29, *infra*.) Collection from the taxpayer himself could be made at any time within six years after the assessment (assuming, of course, that an assessment is made prior to the expiration of the statutory period). (Section 278 (d), p. 28, *infra*.) But collection from the taxpayer may not be made within the first year; and if thereafter the taxpayer divests himself of all his assets, and if a proceeding under Section 280 is the sole remedy against a transferee, then the result is that the Government is powerless to collect its revenue though as much as five years remain of the period in which the original taxpayer might have been pursued, and though in equity the transferred property is still regarded as the transferor's so far as prior creditors are concerned (*Pierce* v. *United States*, 255 U.S. 398, 403). Under such circumstances the petitioners' contention would result in cutting off the transferee's liability before the acts which give rise to it take place,[7] and a statute designed to facilitate the collection of revenue would actually impede such collection. A construction which permits of such a result should be avoided where, as here, the

[7] Cf. Section 311(b) (3) of the Revenue Acts of 1928, c. 852, 45 Stat. 791, 860, and 1932, c. 209, 47 Stat. 169, 241.

statutes clearly point the way to a more reasonable position.

Moreover, it should be borne in mind that a proceeding in equity against transferees, though more cumbersome and less effective generally than the summary procedure provided by Section 280, may often, because of the elasticity and comprehensiveness of equity jurisdiction, possess distinct advantages. That this is so is indicated by the number of such equity suits which have been filed since the enactment of Section 280. (See p. 8, *supra*.)

An interpretation of a statute which deprives the Government of an existing remedy must be supported by clear and unequivocal language. *Dollar Savings Bank* v. *United States*, 19 Wall. 227, 239–240; *Belmont Bridge* v. *Wheeling Bridge*, 138 U.S. 287, 292–293; *United States* v. *Chamberlain*, 219 U.S. 250, 268; *United States* v. *Ayer*, 12 F. (2d) 194, 200–201 (C.C.A. 1st); *United States* v. *Nashville, C. & St. L. Ry.*, 249 Fed. 678, 681–684 (C.C.A. 6th). See also *Billings* v. *United States*, 232 U.S. 261, 287–288; *United States* v. *Stevenson*, 215 U.S. 190, 197; *Joplin* v. *Light Co.*, 191 U.S. 150, 156–158; cf. *Hertz* v. *Woodman*, 218 U.S. 205, 216–217. The application of this rule to the instant case is well illustrated by *United States* v. *Nashville, C. & St. L. Ry.*, 249 Fed. 678 (C.C.A. 6th), *supra*, where it was held that the summary method of assessing and collecting the excise tax of 1909, provided by the administrative provisions of the Revenue Act of that year, was not exclusive of other remedies.

After pointing out that "the government may recover a personal judgment for a tax * * * whenever there exists a duty to pay, provided always another remedy has not been made exclusive," and the further fact that "the rule which denies the use of any but the statutory remedy has no application to the general government, unless clearly and specifically so declared," the court said (p. 682):

> But, assuming that administrative reassessment, including its incidents of possibly added penalties in substantial amounts and its summary method of enforcement (against which a corporation has no effective remedy save by suit to recover back), cannot be made after the three-year period, it by no means follows that the act intended to take from the government power to enforce the payment of a tax to which a corporation is subject, through judicial process and without addition of penalty, * * * especially in view of the express provision of subdivision 8 above quoted, the general policy of the law to promote, rather than to obstruct, the collection of public revenue, and the commonplace proposition that, in the absence of statute otherwise, time does not run against the government.

The petitioners can point to no language in the statute which indicates that Section 280 was to exclude all other remedies, but their contention finds support, and we think its only support, in the legislative history of Section 280. In the conference

report preceding the enactment of the 1926 Act (House Report No. 356, 69th Cong., 1st Sess., p. 44) it was said that the procedure prescribed by Section 280 "is in lieu of the present equity proceeding and is exclusive * * *." It was further said (p. 44) that—

> * * * the amendment makes the procedure for the collection of the amount of the liability of transferees conform to the procedure for the collection of taxes. The amendment thereby substitutes the specialized and more expeditious procedure of the board for that of the district courts in equity.[9]

Moreover, similar views seem to have been expressed by further committee reports in 1928 when it was suggested that Section 280 should be altered.[10]

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[9] See also Senate Report No. 52, 69th Cong., 1st Sess., p. 30.

[10] In 1928 the Joint Committee on Internal Revenue Taxation, after remarking that Section 280 appeared to be the exclusive remedy at that time, recommended "that the procedure by suit be restored as an alternative method of collection." H.Doc. No. 139, 70th Cong., 1st Sess., p. 15; see also the Report of the Joint Committee on Internal Revenue Taxation of November 15, 1927, pp. 67–69. The House of Representatives adopted the suggestion and proposed the restoration in the 1928 Act of the power to proceed against a transferee in the Federal District courts. See House Report No. 2, 70th Cong., 1st Sess., p. 32. The Senate, however, refused to accept the House proposal, its Committee on Finance reporting that the new procedure under Section 280 had proved of greater effectiveness in preventing tax evasion than the former method of court procedure, and that

The Government contends that there is no doubt as to the meaning or construction of the applicable statutes; that resort may be had to reports of legislative committees to settle, not create, a doubt; and that this is not a case for such interpretation. Whatever may have been the intention of the draughtsman who prepared House Report No. 356, *supra,* or of the committee members, or even of the legislators as a body, as to the effect of the proposed legislation, the fact is that the law enacted by the Congress and approved by the President provides an additional and not an exclusive remedy. No other view may reasonably be taken, especially when Section 280 is read in the light of the other sections of the Act.[11] Under these circumstances it is not permissible to go behind the Act itself. Especially is this true, as was pointed out in *Crooks* v. *Harrelson,* 282 U.S. 55, 61, in the case of a taxing

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restoration of the old procedure was neither needed nor desirable. Senate Report No. 960, 70th Cong., 1st Sess., p. 40. Thereafter, the House of Representatives receded and accepted the Senate amendment. House Report No. 1882, 70th Cong., 1st Sess., p. 22.

The foregoing committee reports and the views of the committees were called to the attention of this Court in the Government's brief in the *Phillips case* (pp. 13, 15–16, 43). They were also set forth in the briefs of the parties in the *Greenfield Tap & Die Corporation* case and in the *Updike* case when the latter case was before the District Court and the Circuit Court of Appeals.

[11] It is to be noted that the Treasury Department in drafting the applicable regulations seems not to have taken the view set forth in the committee report. Regulations No. 69, Art. 1291; Regulations No. 74, Art. 1231.

Act, where the rule "applies with peculiar strictness." Legislative reports, it was said in *United States* v. *Shreveport Grain & Elevator Co.,* 287 U.S. 77, 83–84:

> * * * are given consideration in determining the meaning of a statute, but only where that meaning is doubtful. They cannot be resorted to for the purpose of construing a statute contrary to the natural import of its terms. *Wisconsin R.R. Commn.* v. *C., B. & Q. R. Co.,* 257 U.S. 563, 588–589; *Penna. R. Co.* v. *International Coal Co.,* 230 U.S. 184, 199; *Van Camp & Sons* v. *American Can Co.,* 278 U.S. 245, 253. Like other extrinsic aids to construction their use is "to *solve,* but not to *create* an ambiguity." *Hamilton* v. *Rathbone,* 175 U.S. 414, 421. Or, as stated in *United States* v. *Hartwell,* 6 Wall. 385, 396, "If the language be clear it is conclusive. There can be no construction where there is nothing to construe."

In *Van Camp & Sons* v. *Am. Can Co.,* 278 U.S. 245, this Court said with respect to a contention somewhat similar to that of the petitioners in the instant case (pp. 253–254:

> * * * we are asked to consider reports of Congressional committees * * *. But the general rule that "the province of construction lies wholly within the domain of ambiguity," *Hamilton* v. *Rathbone,* 175 U.S. 414, 419, 421, is too firmly established by the numerous decisions of this Court either to require or permit us to do so. The words

being clear, they are decisive. There is nothing to construe. To search elsewhere for a meaning either beyond or short of that which they disclose is to invite the danger, in the one case, of converting what was meant to be open and precise, into a concealed trap for the unsuspecting, or, in the other, of relieving from the grasp of the statute some whom the legislature definitely meant to include. Decisions of this Court, where the letter of the statute was not deemed controlling and the legislative intent was determined by a consideration of circumstances apart from the plain language used, are of rare occurrence and exceptional character, and deal with provisions which, literally applied, offend the moral sense, involve injustice, oppression or absurdity, *United States* v. *Goldenberg,* 168 U.S. 95, 103, or lead to an unreasonable result, plainly at variance with the policy of the statute as a whole. *Ozawa* v. *United States,* 260 U.S. 178, 194. Nothing of this kind is to be found in the present case.

See also *United States* v. *Mo. Pac. R. Co.,* 278 U.S. 269, 278.[12]

[12] The legislative history of Section 280 was clearly brought to the attention of the District Court in the *Greenfield Tap & Die Corporation* case and to the attention of the District Court and Circuit Court of Appeals in the *Updike* case. Moreover, it was mentioned in the Government's brief (pp. 13, 15–16, 43) in the *Phillips* case, and in its opinion in that case this Court referred to the same page of House Report No. 356, 69th Cong., 1st Sess., *supra*, relied upon by the petitioners (see 283 U.S. 594–595, note 4). It thus seems clear

The petitioners' argument that this proceeding is barred by the statute of limitations is plainly without merit if, as we contend, compliance with Section 280 is not a condition precedent to suit against transferees. Section 278 (d), p. 28, *infra*, provides that a proceeding in court for collection of a tax may be brought at any time within six years after assessment. That Section 278 (d) is the provision here applicable is settled.[13] *United States* v. *Updike*, 281 U.S. 489, 495. In the instant case a valid assessment was made January 16, 1926 (R. 40; Sec. 277 (a) (3) and Sec. 278 (c) of the Revenue Act of 1926, pp. 27–28, *infra*) and suit was instituted July 26, 1929 (R. 18), only three and one half years later. Clearly the proceeding is not barred.

II

THE CASE IS WITHIN THE JURISDICTION OF EQUITY

The petitioners contend that the instant proceeding is not one properly cognizable in equity, be-

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that this Court, as well as the other courts which have passed upon the point, were aware of the views of the committee when it made clear its own views that Section 280 did not supersede prior remedies.

[13] In the *Updike* case the Government argued at length that Section 278 (d) was not applicable to suits in equity against transferees. This contention was rejected. The fact that the limitation provided by Section 278 (d) is applicable to suits such as the instant case seems clearly to negative the contention that Section 280 is in any way applicable to such suits, since it is not likely that two statutes of limitations were intended to be applicable to the same liability.

cause, it is asserted, the Government has, or rather *had,* an adequate remedy at law by reason of Section 280. We think this argument is quite inapplicable in view of the fact that the question before the Court is purely one of statutory construction. The argument, in essence, is but a different manner of saying that the procedure under Section 280 is exclusive. It is answered, we think, by the fact that a suit in equity to collect a tax from the transferee of a taxpayer has long been recognized as a proper remedy (*Phillips* v. *Commissioner,* 283 U.S. 589, *supra,* p. 592 and note 2) and by the fact, if our views as to the construction of the statute are correct, that the administrative procedure authorized by Section 280 is an additional method of collection without resort to the courts. It is not a legal remedy at all. In any event, the equitable nature of the Government's right being clear, the jurisdiction of equity must necessarily follow. See *Case* v. *Beauregard,* 101 U.S. 688, 691–692. In many instances the jurisdiction of law and equity is concurrent. See Story's Equity Jurisprudence (14 ed.), § 33. Moreover, when the instant suit was filed the remedy provided by Section 280 was not available to the Government because of the lapse of the short period of limitation provided by Section 280 (b) (1), p. 29, *infra.* (See Pet. Br. pp. 30–31.) Petitioners cite no authorities which bar from equitable relief a person, not guilty of laches and otherwise entitled

thereto, merely because that person might once have been able to accomplish the end desired by other means.

The petitioners also insist that the suit is not a proper one for equity jurisdiction because no judgment was ever secured against the petitioners' transferor, and because the suit did not attempt to subject the transferor to judgment. This contention is unfounded. It is conceded that the transferor was left by the transfer without assets and that a warrant of distraint against it was returned unsatisfied (R. 41). Entry of judgment against the transferor would have been nothing but an idle ceremony, and under such circumstances judgment against the transferor need be neither sought nor entered. See *Case* v. *Beauregard,* 101 U.S. 688, 691, *supra; United States* v. *Oscar Frommel & Bro.,* 50 F. (2d) 73, 74 (C.C.A. 2d), certiorari denied, 284 U.S. 647; *Hatch* v. *Morosco Holding Co.,* 50 F. (2d) 138, 140 (C.C.A. 2d); *Pann* v. *United States,* 44 F. (2d) 321 (C.C.A. 9th); *United States* v. *Garfunkel,* 52 F. (2d) 727, 729 (S.D.N.Y.).

III

IT WAS NOT AN ABUSE OF DISCRETION FOR THE DISTRICT COURT TO ALLOW INTEREST FROM THE DATE OF THE ASSESSMENT

The petitioners complain of the allowance by the courts below of interest on the judgment from January 16, 1926, the date of the assessment against the petitioners' transferor, and urge that interest should have been allowed only from July 29, 1929,

the date when suit was instituted against petitioners.

We think this complaint unfounded. Interest is but "the compensation due for the use of money," and in the absence of an express statutory prohibition interest is allowed on claims due to the Government "in all cases where equitably due." *Billings* v. *United States,* 232 U.S. 261, 285–288; see *United States* v. *Childs,* 266 U.S. 304, 307–308; see also Sections 274 (j) and 276 (b) of the Revenue Act of 1926. The petitioners, volunteers, have had the use of the taxpayer's property since 1921, though during all the intervening time the Government equitably has been entitled to have that property applied in settlement of its claim. Under these circumstances we think it may not be said that it was inequitable for the courts below to allow interest from January 16, 1926.[14] Cf. *Richmond* v. *Irons,* 121 U.S. 27, 64. Interest in a reasonable amount was a part of the tax (*Billings* v. *United States, supra; Nolte* v. *Hudson Nav. Co.,* 8 F. (2d) 859, 867–868 (C.C.A. 2d)), and accordingly it is payable by the petitioners as is the tax itself.

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[14] It may be that the amount of the tax in question became a lien upon the assets held by the petitioners on January 16, 1926, the date the tax was assessed. See Section 3186, R.S., as amended (U.S.C., Title 26, Sec. 115), p. 30, *infra.*

The District Court allowed interest at the rate of 6 per centum per annum (R. 50). It would seem that the court might have allowed interest at 12 per centum per annum. See Section 276 (b) of the Revenue Act of 1926; *United States* v. *Garbutt,* 35 F. (2d) 924, 927 (C.C.A. 10th).

There is nothing in the record to show, as petitioners claim (Br. p. 38), that they were innocent of the obligation and knew nothing of it until the instant suit. Indeed, there is reason to believe the contrary. In 1924, 1925, and 1926, long after the distribution of the corporation's assets (R. 40–41), two of the petitioners, officers and large stockholders of the corporation, signed waivers extending the time for assessment of the corporation's taxes for 1918 and 1919 (R. 10–12; 25–27). Obviously these petitioners must have known that the Government was making a claim for taxes against the corporation; and they, of course, knew that they were in possession of the corporation's property.

CONCLUSION

The judgment of the Circuit Court of Appeals should be affirmed.

Respectfully submitted.

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MAY 1933.

APPENDIX

STATUTES INVOLVED

Revenue Act of 1926, c. 27, 44 Stat. 9, 55, 58, 59, 61, 114, 121:

SEC. 274. (a) If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this title, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within 60 days after such notice is mailed (not counting Sunday as the sixtieth day), the taxpayer may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. Except as otherwise provided in subdivision (d) or (f) of this section or in section 279, 282, or 1001, no assessment of a deficiency in respect of the tax imposed by this title and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 60-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3224 of the Revised Statutes the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. (U.S.C. App., Title 26, Sec. 1048.)

SEC. 277. (a) Except as provided in section 278—

* * * * *

(3) The amount of income, excess-profits, and war-profits taxes imposed by the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes", approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918 and by any such Act as amended, shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period (U.S.C.App., Title 26, Sec. 1057).

SEC. 278. (c) Where both the Commissioner and the taxpayer have consented in writing to the assessment of the tax after the time prescribed in section 277 for its assessment the tax may be assessed at any time prior to the expiration of the period agreed upon (U.S.C.App., Title 26, Sec. 1060).

(d) Where the assessment of any income, excess-profits, or war-profits tax imposed by this title or by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer (U.S.C.App., Title 26, Sec. 1061).

SEC. 280. (a) The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this title or by any prior income, excess-profits, or war-profits tax Act.

* * * * *

(b) The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the taxpayer. * * * (U.S.C. App., Title 26, Sec. 1069.)

SEC. 1109. (a) Except as provided in sections 277, 278, 310, and 311—

* * * * *

(3) Where the assessment of any tax imposed by this Act or by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (A) within six years after the assessment of the tax, or (B) prior

to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer. (U.S.C.App., Title 26, Sec. 107.)

SEC. 1122. (b) The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the provisions of this Act. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such provisions. (U.S.C.App., Title 26, Sec. 1257).

Revised Statutes:

SEC. 3186 (as amended by the Act of February 26, 1925, c. 344, 43 Stat. 994):

That if any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto upon all property and rights to property belonging to such person: *Provided, however,* That such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which

the property subject to such lien is situated: * * * (U.S.C., Title 26, Sec. 115).

SEC. 3213 (as amended by the Act of March 3, 1911, Sec. 289, c. 231, 36 Stat. 1167):

It shall be the duty of the collectors, in their respective districts, subject to the provisions of this title, to prosecute for the recovery of any sums which may be forfeited by law. All suits for fines, penalties, and forfeitures, where not otherwise provided for, shall be brought in the name of the United States, in any proper form of action, or by any appropriate form of proceeding, qui tam or otherwise, before any district court of the United States, for the district within which said fine, penalty, or forfeiture may have been incurred, or before any other court of competent jurisdiction; and taxes may be sued for and recovered in the name of the United States, in any proper form of action, before any district court of the United States for the district within which the liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the said action. (U.S.C., Title 26, Sec. 142; U.S.C. Sup. VI, Title 26, Secs. 1644, 1645.)

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